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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 699

JAY M. ROWLAND,

Petitioner.

vs.

STATE OF ARKANSAS,

Respondent

PETITION FOR REHEARING ON APPLICATION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes now the above named Petitioner, Jay M. Rowland, and presents this, his Petition for a Rehearing on the Petition for Writ of Certiorari in this case, and in support thereof states:

I

Jurisdiction

The Petition for Writ of Certiorari was filed on the 22nd day of March 1950, and was denied on the 8th day of May 1950. This Petition for Rehearing is filed within less than fifteen days thereafter, under Rule 33 of the Rules of this Court.

II

Reasons for Petition for Rehearing

1. On re-analysis, it is found that neither the Petition for Writ of Certiorari nor the supporting Brief specifically points out that the error of the United States Court of Appeals upon the principal question of general law involved was the controlling factor in the case. That error lay in interpreting Section 2254 of the 1948 Recodification of the Judicial Code. 28 U. S. C., Section 2254; 28 U. S. C. A., Section 2254. STATE CUSTODY.

2. A correct ruling, in accordance with this Court's decision on that question of general law, would have resulted in a different disposition of this case.

III

The controlling question, therefore, is: When and by what method or means of restraint is a person in custody pursuant to the judgment of a State Court, that he may under the provision of Section 2254 (*supra*) have an examination into the substance of his protest against unconstitutional detention?

IV

On that question, the holding of the United States Court of Appeals in this case is in direct conflict with the applicable decision of this Court in the most recent case of *Darr* v. *Burford, Warden, Oklahoma State Penitentiary*, 70 S. Ct. 587, —— U. S. ——, decided April 3, 1950. This decision is an intervening circumstance of substantial and controlling effect and was unreported at the time the Petition for Writ of Certiorari and accompanying Brief were filed.

This Court has said in *Darr* v *Burford* (*supra*) at pages 593-594:

> "In 2254 of the 1948 recodification of the Judicial Code, Congress gave legislative recognition to the Hawk rule for the exhaustion of remedies in the State Courts and this Court. This was done by embodying in the new statute the rulings drawn from the precedents."

V

The custody pursuant to the judgment of a State Court should, therefore, embody in the new statute (Section 2254 of the Judicial Code) the rulings drawn from the precedents.

McKenzie v. *Barrett*, 141 Fed. 964, 73 C. C. A. 280, establishes the precedent with reference to custody pursuant to the judgment of a State Court while a person is at large on bail.

This is a substantial ground, not previously presented, arising from the principle asserted in *Darr* v. *Burford* (*supra*).

VI

Public Importance

In Chapter 153 of Title 28, U. S. C.:

Section 2241 (a) refers to "the restraint complained of".

Section 2241 (c) refers to "custody".

Section 2242 refers to "applicant's commitment or detention".

Section 2243 refers to "person detained".

Section 2244 refers to "detention of a person pursuant to a judgment of a court".

Section 2251 refers to "person detained in any State Court or under the authority of any State".

Section 2252, refers to "in custody of state officers, or by virtue of State laws".

Section 2253 refers to "detention complained of".

Section 2254 refers to "in custody pursuant to a judgment of a State Court".

Apparently Congress intended to include all manner of restraint, detention, and custody whereby persons restrained in violation of Constitutional rights may regain their freedom. Actual imprisonment is not spelled out in these statutes as a prerequisite for maintaining *Habeas Corpus* proceedings, and there is no provision that a person at large under bond may not be heard in protest against violations of his Constitutional rights by a State Court judgment.

There is nothing of greater public importance than the effective protection of the Great Writ to safeguard a citizen against imprisonment by State or Nation in violation of his Constitutional rights. It is within the discretion of the Supreme Court of the United States to clarify and eliminate these conflicting requirements as to restraint, detention, and custody, and it is to the public interest that doubt concerning this issue should not go unresolved.

VII

For the foregoing reasons, Petitioner respectfully urges that a rehearing be granted; that upon further consideration the Order of this Court on May 8, 1950 denying the Petition for Writ of Certiorari be revoked; and that the Writ of Certiorari issue.

Respectfully submitted,

C. Floyd Huff, Jr.,
Hot Springs, Arkansas,
Attorney for Petitioner.

Certificate of Counsel

I, C. Floyd Huff, Jr., Attorney for the above named Petitioner, Jay M. Rowland, do hereby certify that the foregoing Petition for a rehearing of this cause is presented in good faith and not for the purpose of delay, and I further certify that the said Petition is restricted to intervening circumstances of substantial or controlling effect and to other substantial grounds available to petitioner although not previously presented.

C. Floyd Huff, Jr.,
Hot Springs, Arkansas,
Attorney for Petitioner.

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